

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.No.3825 of 2018

and

Cmp.No.21242 of 2018

M.Ashokan

... Petitioner

Versus

P.Mani

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 03.04.2018 passed in I.A.No.405 of 2017 in O.S.No.129 of 2012 on the file 1st Additional Sub Judge, Villupuram.

For Petitioner : Suresh N.

For Respondent : R.Poornima

ORDER

This Civil Revision petition has been filed challenging the order dated 03.04.2018 passed in I.A. No. 405 of 2017 in O.S. No. 129 of 2012 on the file 1st Additional Sub Judge, Villupuram.

2.The learned counsel for the petitioner submitted that the said

I.A.No.405 of 2017 was filed for the purpose of filing an additional written statement in the suit for a counter-claim. The Court below, after hearing both parties, allowed the application and permitted the respondent herein, to file additional written statement.

3.It is the main contention of the petitioner that no additional written statement can be filed by way of counter claim, after framing the issues. In this regard, he has also relied on the judgment passed by the Hon'ble Supreme Court of India in **SLP.(C).No.23599 of 2019** in the case of ***Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri and others, reported in 2020 (2) SCC 394***, in which, it was held that no counter claim can be filed, after framing issues. By citing the above judgment, it is stated that the order passed by the Court below is liable to be set aside.

4.Per contra, the learned counsel for the respondent submitted that the Court below has properly disposed the application as per the law laid down by the Honourable Supreme Court.

5.Heard the learned counsel on both sides and perused the materials available on record.

6.The issue to be decided in the present case is, as to whether the counter claim can be filed by way of additional written statement, after the framing of issues. In the present case, it is submitted that the issue has been already framed and thereafter only the application for filing the additional written statement was filed, wherein, a counter claim has been raised.

7.The Court below after hearing both sides, passed the order under challenge. At this juncture, it would appropriate to extract the relevant portion of the impugned order in paragraph Nos.7 & 8, hereunder:-

“7.On perusal of records, case is of the year 2012 and summons were served on the petitioner only in the year 2015. It is made out that petitioner has already filed written statement and now seeks permission for filing additional written statement along with counter claim.

8.On perusal of additional written statement sought to be filed by the petitioner it is made out that petitioner has not introduced any new facts which are contrary to his earlier defense. This court is of view that cause of action for filing the counter claim had arose at the time of filing written statement and the counter claim is not based upon any new cause of action after the filing of written statement. If any new cause of action arose after the

filing the written statement alone, petitioner has to file a suit. But in this case, cause of action already arose for petitioner for filing counter claim even at the time the filing written statement. The defense taken by the respondent that it is barred by limitation is concerned, this court is of view the question of the limitation can be taken at the time of the trial and petition can be allowed subject to question of limitation. No prejudice would be caused to respondent as, petitioner has to establish averments in additional written statement and respondent can put forth his case by filing reply statement. In facts and circumstances of case, this court of view that plea of counter claim is maintainable. Admittedly the case is in part heard stage for cross examination of plaintiff, at the stage the petitioner has come forwarded with this petition. In the interest of justice to provide petitioner an opportunity to prove the case and prevent multiplicity of proceedings and for proper adjudication of the case the petition has to be allowed on cost. ”

8. On perusal of the order passed by the Court below would appear that the present case, the issues have been framed and now the matter is “part heard stage for the cross-examination of the plaintiff ”. At this juncture, it would appropriate to extract the paragraph No.20 of the judgment of the

Hon'ble Supreme Court of India passed in **SLP.(C).No.23599 of 2019 reported in 2020 (2) SCC 394**, supra, hereunder:-

“20. We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- i. Period of delay.*
- ii. Prescribed limitation period for the cause of action pleaded.*
- iii. Reason for the delay.*
- iv. Defendant's assertion of his right.*
- v. Similarity of cause of action between the main suit and the counter-claim.*
- vi. Cost of fresh litigation.*

vii. Injustice and abuse of process.

viii. Prejudice to the opposite party.

ix. and facts and circumstances of each case.

x. In any case, not after framing of the issues.”

9. In the above judgment of the Hon'ble Apex Court in paragraph No.20 clause (x), it has held as “*In any case, not after framing of the issues*”, In view of the above, no additional written statement can be filed to raise any counter claim, after the framing of the issues. In the present case, admittedly the issues were framed, the case is under part heard stage for cross examination of the plaintiff. In view of the law laid down by the Hon'ble Apex Court, this Court is of the opinion that no additional written statement can be filed for raising the counter claim, subsequent to the framing of the issues by the Trial Court.

10. A perusal of the judgment of the Honourable Supreme Court, it is clear that the counter claim can be raised only before issues are framed. In the present case, the application has been filed to file an additional written statement to raise the counter claim, after framing of the issues. This is not permissible as per law laid down by the Hon'ble Apex Court referred supra. Hence, the order passed by the Court below is deserves to be set aside.

11.In view of the above judgment and submission made by the learned counsel for the revision petitioner, this Court set aside the order dated 03.04.2018 passed in I.A.No.405 of 2017 in O.S.No.129 of 2012 on the file 1st Additional Sub Judge, Villupuram. The Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

22.02.2021

klt

To

The Additional Sub Judge, Villupuram.



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KRISHNAN RAMASAMY, J.

klt



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